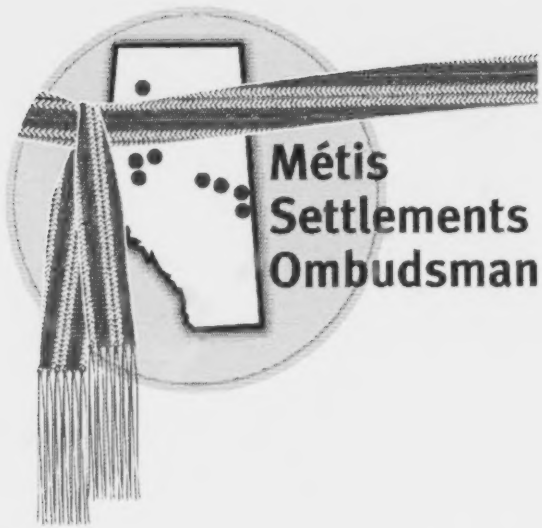


Annual Report

For the period April 1, 2004 to March 31, 2005



April 2005

The Honourable Pearl Calahasen
Minister of Aboriginal Affairs and Northern Development
403 Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Honourable Minister:

I am honoured and pleased to present to you the second Annual Report of the activities of the Office of the Métis Settlements Ombudsman.

This report is submitted to you pursuant to *Schedule 1* of the *Agreement* effective April 1, 2003; it covers the activities of the Office of the Métis Settlements Ombudsman for the period April 1, 2004 to March 31, 2005.

Original Signed by:
Harley Johnson
Alberta Métis Settlements Ombudsman

Office of the Alberta Métis Settlements Ombudsman
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Message from Harley Johnson, Alberta Métis Settlements Ombudsman



The main role of the Métis Settlements Ombudsman (MSO) is to inspect or investigate complaints where Settlement members believe they have been treated unfairly or have an issue relating to conflict of interest by Settlement Councils or staff. The role also includes the ability to inspect/investigate issues without a formal complaint. The MSO has both the authority and the capability to ask probing questions on behalf of members of the eight Alberta Métis Settlements.

Some of the review/investigation findings have shown that there *have* been errors in the activities of Councils, staff, and entities of Settlements. In others, no mistakes or errors have been found on the part of Settlement officials. The strength of an Ombudsman system is that it acts as an independent reviewer of issues. It recommends corrective action(s) when justified and yet supports the activities of public officials when the evidence shows they have acted correctly or there is a lack of evidence to support a complaint.

An Ombudsman's role is designed to be remedial (corrective) rather than punitive (disciplinary). The ultimate achievement is to correct errors/mistakes and to ensure, as much as possible, they do not happen again, thereby improving proper administrative activities on the Settlements. An Ombudsman seeks stronger measures to correct a situation *only* when this remedial process does not work. Even then, the MSO can only make recommendations to the Minister of Aboriginal Affairs and Northern Development. Under the *Métis Settlements Act*, it is the Minister who decides on an appropriate remedy.

Many of the issues reviewed to date indicate the need for Settlements to have better bookkeeping and/or filing systems. An improvement of these systems would make it easier to identify if activities have or have not been appropriate. In a number of cases, even though it is believed the activities of persons in authority have been appropriate, there has been an insufficient paper trail to prove it.

The acceptance of the role of an Ombudsman within the Settlements has, for the most part, been very good. There are, however, some clearly defined pockets of resistance to the role by **some** people in positions of authority who do not like or accept someone 'looking over their shoulders.'

The Office of the MSO has now been in existence for two years. As can be seen in the statistical portion of this Annual Report, the issues that have been brought to our attention are numerous and varied. Resolving many of these issues, especially with the cooperation of Settlement members and Councils, has been very gratifying and worthwhile. There are currently some very complex issues being looked into. With continued cooperation and the development of trust, more of these issues will be resolved over the next few months.

I have particularly enjoyed the Mentoring Program, which has been in place since the Office began. Settlement members/summer students have worked in the Office learning the advisory/investigative role. This has been as educational for the MSO Office as it has been for the mentoring students. It also provides for a cultural point of view to be represented and considered during reviews and investigations.

My personal term as Métis Settlements Ombudsman will be coming to a close shortly, and a competition will be held to find my replacement. I have agreed to serve as Mentor to whomever is chosen, and I look forward to this role.

To the Minister of Aboriginal Affairs and Northern Development and her staff, the Métis Settlements General Council, the Métis Settlements Appeal Tribunal, and the Métis Settlements Councils, I thank you for your support over the past two years, especially as it relates to your assistance in the development of this Office and what it stands for.

To my own staff, the personal and professional support you have given to the Office is nothing short of exceptional.

To all Settlement members, this Office will continue to assist you in the development of good, fair and just governance. We will do our part to make sure the governance structure you have in place operates in a fair and equitable way and that it will continue to do so for those who follow.

Original Signed by:

Harley Johnson

Introduction to Staff

The Office of the Métis Settlements Ombudsman (MSO) has been open since April of 2003. Our goal is to provide exceptional service to the members, Councils and staff of the eight Alberta Métis Settlements.

Staff members as at March 31, 2005:



Back (left to right): **Chuck McBurney,** *Advisor*; **Harley Johnson,** *Métis Settlements Ombudsman*; **Gary Jones,** *Senior Advisor*

Front (left to right): **Terri Dorfman,** *Office Administrator*; **Jacqueline Bellerose,** *Junior Advisor*

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*2004/05 staff included: *Advisors* Lucy Mercier, Donna Lakey (Gift Lake) and *Mentoring Students* Lisa L'Hirondelle (East Prairie), Bonnie Belhumeur (Buffalo Lake)

Response to the MSO Mentoring Program has been positive. The purpose of this Program is to educate Settlement members on the principles of administrative fairness and conflict of interest, as well as to provide a working understanding of the review/investigation process. The MSO Office benefits from the experience and appreciates and values the input and the shared knowledge from the Settlement perspective. The Mentoring student can, in turn, share information about the Office of the MSO with other Settlement members.

Staff Training, Conferences, and Presentations

Staff took part in the following meetings and presentations in 2004/05:

Training and conferences:

- Basic Investigative Training – Canadian Ombudsman Forum
- Freedom of Information and Protection of Privacy
- Employment Standards
- Ethics Conference
- U.S. Ombudsman Association Conference
- International Ombudsman Conference
- Elders and Youth Conference – Fishing Lake

Presentations made:

- New Councillors Workshops
- Numerous meetings with Councils and staff
- Tanzanian Fellows – Ethics Practices
- Quebec Inuit Council – Role of Métis Settlements Ombudsman

"Various public organizations have expressed interest in this Office. Questions have been asked of the applicability and value of our process to their specific organizations and situations. This implies that other organizations are facing similar issues to those being identified within the Alberta Métis Settlements and are searching for methods to deal with them."

The Office of the MSO was invited to participate in the Elders and Youth Conference held in Fishing Lake in August 2004.

Jacqueline Bellerose, *Junior Advisor*, was on hand to speak to conference attendees about the role and function of the MSO.



Overview

Introduction

Concerns have been raised in the past about the management and leadership of Métis Settlements. A 1999 Métis Settlements Appeal Tribunal Task Force looked into this issue and recommended an ombudsman-like function be created for the Alberta Métis Settlements. This was later supported by a feasibility study. Most Métis Settlement members and elders supported this recommendation.

The Office of the Métis Settlements Ombudsman (MSO) was created in 2003 to provide an independent and impartial place to take complaints about Settlements' management or leadership. It also exists to identify unfair or unjust complaints made against the Councils and staff.

Alberta's Minister of Aboriginal Affairs and Northern Development appoints the MSO based on a recommendation of a selection committee. The Minister delegates the MSO to hear complaints and to appoint inspectors and investigators as needed. The individuals appointed by the MSO have the authority to conduct independent inspections or investigations, with the powers of a Commissioner, under the Alberta *Public Inquiries Act*.

Mission Statement

The mission of the Métis Settlements Ombudsman (MSO) is to promote the rights and responsibilities of Métis Settlement Councils, staff, entities and members, through inspection, investigations and recommendations.

Guiding Principles

The mission will be accomplished utilizing inspections and investigations involving the principles of administrative fairness and ethical leadership (conflict of interest) guidelines. (In order to better understand the principles of **Administrative Fairness** and **Conflict of Interest**, checklists have been developed – please refer to Appendix C and Appendix D.)

Objectives

By authority of a ministerial delegation, the Métis Settlements Ombudsman:

- ✓ will **assist** Settlement members and Councils to understand the concepts of administrative fairness and leadership issues.
- ✓ will **promote** appropriate standards for the delivery of Settlement services to the Settlement communities.
- ✓ will **accept** complaints from Settlement members who feel that an administrative error or injustice has occurred in their dealings with Métis Settlement Councils, staff, or a Council entity.
- ✓ will **accept** complaints from Settlement members who feel that a Métis Settlements Council, an individual Councillor, staff member, or an employee of a Council entity has been involved in a leadership conflict of interest.
- ✓ will **identify** unfair or unjust complaints against members of Métis Settlements Councils, Council staff, or an employee of a Council entity where there are frivolous complaints or rumoured allegations of impropriety.
- ✓ may **conduct** an investigation/inspection where a review of the complaint identifies sufficient evidence to indicate an administrative error or injustice may have occurred and/or a Council, Councillor, staff member or employee of a Council entity has acted in a real or perceived conflict of interest.
- ✓ may **inspect/investigate** any administrative fairness or leadership issue "on [the MSO's] own initiative." *(Métis Settlements Act)*
- ✓ will **communicate** the results of an inspection/investigation in any fashion the MSO deems to be appropriate, including recommendations to resolve a specific complaint or to improve a service delivery system.
- ✓ will **advocate** for any recommendation(s) made.

The Métis Settlements Ombudsman:

- ✓ cannot accept complaints about issues that occurred before March 31, 2002.
- ✓ may insist that all options available to a complainant be attempted before the MSO can become involved.
- ✓ is guided by the provisions of Section 171-175 of the *Métis Settlements Act.*

Complaint Process

Investigation and Resolution

It is the Métis Settlements Ombudsman's (MSO) job to hear complaints and concerns and to deal with them in the most appropriate way. When a complaint is received, the MSO will determine if there is enough evidence to start an investigation. If a review discovers that an error or irregularity was made, the MSO works informally with people to try to resolve the concern and to prevent the same error from occurring again.

Concerns that cannot be resolved through discussion or mediation are investigated. The results of investigations may be made public.

Making a Complaint

Anyone may make a complaint to the MSO. However, an individual who has a complaint must first try to resolve the matter him/herself. This includes going through any formal appeal processes that might exist with Métis Settlements. Anyone who remains dissatisfied after appeals are heard is welcome to bring a complaint to the MSO.

There is no charge for filing a complaint.

Complaint Criteria

For a complaint to be considered:

- The issue complained about must have occurred on or after March 31, 2002. Occasionally, an issue that occurred prior to March 31, 2002, may be reviewed if action on a complaint was taken after March 31, 2002.
- The complaint should be in writing and include the name, address, telephone number and signature of the person making the complaint.
- The complaint must relate to the activities or business of an Alberta Métis Settlement Council, an individual Métis Settlement Councillor or staff.
- The complaint must involve alleged mismanagement, an unfair practice or a conflict of interest.
- The complaint must be based on facts or evidence.

Four basic steps have been developed for the process of looking at a complaint:

Further Inquiry: This is when a complaint has been received, but there is not enough information to proceed. MSO staff contact the person who submitted the complaint to clarify the issue(s) or to make sure the issue is within the jurisdiction of the MSO.

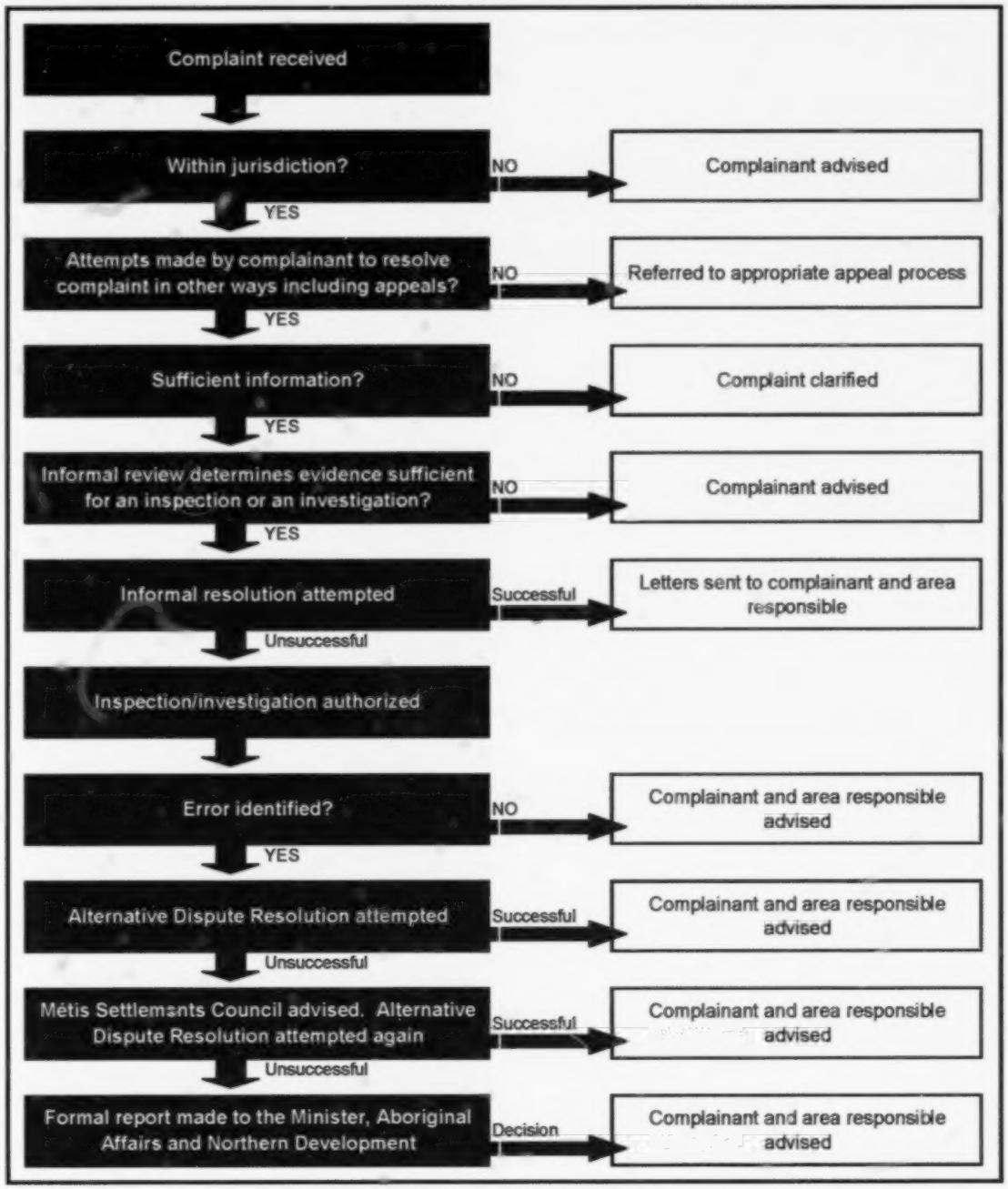
Review: Once the MSO is satisfied the issue is within jurisdiction and the complaint appears to have merit, a *review* is authorized. The advisor/investigator may then contact the Council, staff or entity to seek help in determining if there is evidence to suggest an error or inappropriate activity occurred. The advisor/investigator then submits a recommendation to the MSO based on the findings. That recommendation might be: to close the file, as there is a lack of evidence to support the complaint; to enter into a formal inspection or investigation; or to suggest any other action the advisor/investigator may feel is appropriate. Mediation techniques might be used during this stage.

Inspection/Investigation: If there is enough evidence to suggest an error occurred, or a Council, staff member or entity has acted inappropriately, and it cannot be resolved through mediation, a formal inspection or investigation is authorized under the *Métis Settlements Act* (MSA). Once appointed under the MSA, an inspector/investigator has the same power and authority as a Commissioner under the *Public Inquiries Act*. Normally, the person who completed the *review* would not be appointed as an inspector or investigator.

Report: If the inspection or investigation supports the findings of the *review*, mediation would be tried once again and a *report* would be submitted to the MSO with appropriate recommendations. Any person who might be negatively affected by a *report* is given the opportunity to present evidence or argument to the MSO as to why a recommendation(s) should not be accepted.

The process, while effective in most cases, is very time consuming. A study will be done within this next year to look at options aimed at speeding up the process.

Complaint Process Flowchart



Statistical Information

The Office of the MSO keeps internal, confidential records on the complaints it receives. Statistics are kept to help identify trends and/or areas of concern and to provide direction and focus for the Office.

The following chart shows the number of complaints received, according to Settlement:

Settlement:	Number of Complaints *2004/05*	Number of Complaints *2003/04*
Buffalo Lake	46	30
East Prairie	30	44
Elizabeth	17	10
Fishing Lake	37	204**
Gift Lake	25	24
Kikino	9	51
Paddle Prairie	48	33
Peavine	28*	30
Other	2	11
TOTAL:	**242**	**437**

**This total includes a Forensic Review conducted by the MSO at the request of the Council.*
***Includes numerous petitioners having multiple complaints.*

As expected, the initial number of complaints (437) was high. This was due to a build up of issues not dealt with prior to the start up of the MSO Office. Since that time, numerous issues have been dealt with and Settlement members better understand the jurisdiction of the Office.

The total complaints received in 2004/05 can be summarized as follows:

Jurisdictional Complaints	**201**	
Non-Jurisdictional Complaints	**23**	
Requests for Information	**16**	
Formal Investigations (see "Case Summaries" – page 14)	**2**	
Total Complaints Received		**242**

Complaints are broken down into **jurisdictional** (those which the MSO has the authority to look into) and **non-jurisdictional** (those outside MSO authority).

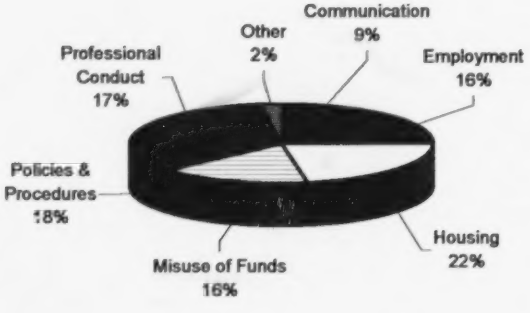
Complaints within the jurisdiction of the MSO fall within two categories: *Administrative Fairness* (how the Council, staff, members and other entities deal with each other in their daily business) or *Conflict of Interest* (fairness, integrity and impartiality of decision making).

Jurisdictional Complaints Received
April 1, 2004, to March 31, 2005

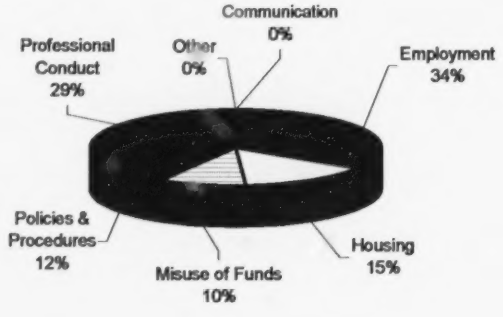
	Number of Complaints	
Complaint Categories:	**Administrative Fairness**	**Conflict of Interest**
Communication	15	0
Employment	25	14
Housing	35	6
Misuse of Funds	26	4
Policies & Procedures	28	5
Professional Conduct	27	12
Other	4	0
Subtotal	160	41
TOTAL	201	

Within the Conflict of Interest component, complaints regarding nepotism (favouritism shown to family members) make up 54% of the total.

Administrative Fairness



Conflict of Interest



Non-jurisdictional complaints, those outside of MSO authority, were grouped as follows:

Non-Jurisdictional Complaints Received
April 1, 2004, to March 31, 2005

Categories:	Number of Complaints
Aboriginal Affairs and Northern Development	0
Métis Settlements General Council	0
Métis Settlements Appeal Tribunal	1
Bill C-31 – Status under the Indian Act (Canada)	3
Other	19
TOTAL	**23**

A number of complaints received were termed "requests for information" (i.e. the caller wished to remain anonymous or asked for clarification on the role of the MSO):

Requests for Information	
TOTAL	**16**

Of the total 537 complaints carried forward April 1, 2004, and received in 2004/05, **395 were resolved:**

Files Brought Forward April 1, 2004	**295**	
Total Complaints Received 2004/05	**242**	
Total Complaints:		**537**
Resolution of Jurisdictional Complaints:	348	
- Administrative Fairness (247)		
- Conflict of Interest (101)		
Resolution of Non-Jurisdictional Complaints	30	
Resolution of Requests for Information	17	
Total Complaints Resolved:		395
Total Active Files as at April 1, 2005		**142**

The MSO makes every attempt to resolve concerns and bring about a positive conclusion for both the complainant and for the party being complained about. In some cases, the MSO was able to provide a referral or to act as a "mediator" between the two parties. Jurisdictional complaints were resolved as follows in 2004/05:

Resolution of Jurisdictional Complaints
Files Closed 2004/05

Disposition:	Administrative Fairness	Conflict of Interest
Oral complaint/no formal complaint submitted	60	16
Inquiry made/referral given/resolution facilitated	28	2
Reviewed: Insufficient evidence to warrant inspection and/or investigation	87	37
Reviewed: Sufficient evidence identified and resolved through:		
-mediation/arbitration	6	1
-complaint withdrawn	4	0
-informal resolution successful	62	44
Inspection/Investigation: insufficient evidence	0	0
Inspection/Investigation: recommendation made/resolved through:		
-mediation/arbitration	0	0
-complaint withdrawn	0	0
-recommendation accepted and implemented	0	1
Formal report to the Minister	0	0
Subtotal	247	101
TOTAL	348	

It is interesting to note that 22% (as compared to 58% the previous year) of the jurisdictional complaints (Administrative Fairness: 60, Conflict of Interest: 16) did not move beyond "oral complaint/no formal complaint submitted." In order for a complaint to be reviewed, it must be in writing and signed by the individual.

Case Summaries

The following case summaries provide a sampling of the types of complaints the MSO receives:
Every attempt has been made to protect the privacy of the individuals involved.

FORMAL INVESTIGATION – Councillors Indebted to a Settlement for More Than $250 Without Repayment Agreements

A Settlement member complained the Administrator was not fulfilling duties for the betterment of the Settlement. The MSO conducted further inquiries, and the complainant clarified the original complaint to indicate two Councillors of the Settlement had become indebted to the Settlement for more than $250 without a Repayment Agreement in place. A review was then authorized and conducted which identified the complaint was valid; however, one of the Councillors had paid the outstanding debt. When an advisor with the Office of the MSO informed the second Councillor of the duty to resign, this Councillor disputed the amount.

The MSO appointed Mr. Timothy Christian, Q.C., to investigate the matter formally. Mr. Christian, former Dean of Law of the University of Alberta, and an expert in Administrative Law, was chosen, as this was the first formal investigation to be conducted by the Métis Settlements Ombudsman and would serve as a blueprint for future investigations.

In his Report, Mr. Christian made the following observation:

> **"This is a case of corruption. Settlement monies are not the private reserve of Councillors or quorum leaders. Councillors are trustees of the Settlement funds and are accountable to the Settlement members for the proper management of the public money. There was a serious failure here to recognize the important duties placed upon persons holding elected office. The practices revealed by this investigation are unacceptable under the standards imposed by the *Métis Settlements Act.***
>
> **The misconduct found in this investigation is not only contrary to the provisions of the *Métis Settlements Act* but may well constitute an offence under section 122 of the Criminal Code."**
> *(This section of the Criminal Code outlines the penalty for an official who commits fraud or a breach of trust.)*

Mr. Christian's report goes on to make the following recommendation:

> **"That steps be taken to alert elected members of Councils and citizens of settlements of the high standards expected of elected Councillors. The best defence against corruption is an informed electorate. Settlement citizens should be aware of the important restrictions placed upon the ability of Councillors to**

access Settlement funds by the *Métis Settlements Act*."

The complainant indicated the primary concern was to ensure the Settlement was repaid the outstanding debt. As a result, the Councillor, with consent of the Council, signed a Repayment Agreement. The complainant then applied for an Originating Notice to a Judge who, after hearing the evidence, found that the Councillor was disqualified from running in the Council election and declared the Councillor's seat on the Council to be vacant.

FORMAL INVESTIGATION #2 - Outstanding Debts/Repayment Agreements

The first investigation provided evidence to the MSO that almost all Settlement members on this particular Settlement have outstanding debts to the Settlement and its entities (not just Councillors) without a Repayment Agreement and that this appears to be a normal behaviour and a widespread practice. In addition, a previously conducted Forensic Review for the former Métis Settlements Transition Commission contained corrective recommendations on outstanding debts, but these recommendations appeared to have been ignored. As a result, a second investigation was authorized to look at:

"Any outstanding debts to the … Settlement and/or its Entities by Settlement Members with or without a Repayment Agreement in place and whether or not the Repayment Agreements which are in place are being adhered to."

The investigator reported that there was over $470,000 in outstanding accounts to the Settlement and Entities by members of the Settlement.

In addition, almost 50% of these accounts did not have appropriate Repayment Agreements in effect.

The report was given to the Settlement Council along with 14 recommendations, some of which include:

- A collection policy should be established which includes involving a Collection Agency and/or Small Debts Court.
- A review of the policies involving advances and arrears should occur, ensuring there are strict guidelines in place, including no further advances be given if there are other outstanding debts to the Settlement.
- Upgrading of the accounting system for recording of advances.
- Seeking legal advice to develop a new Repayment Agreement that would cover all advances and which would be a legally binding document.
- Salary advances should be as the name implies, an advance on one's salary, and should be deducted in whole from the next salary cheque. Currently, the Settlement is granting an interest-free loan on the expectation it will be paid back from wages at some further point.
- Monthly reports should be submitted to the Council for review.

The Council has agreed to review the recommendations and to provide a response to the MSO.

Petitions

Three separate Settlements sent petitions to the Honourable Pearl Calahasen, Minister of Aboriginal Affairs and Northern Development, calling for a forensic audit. The petitions were forwarded to the MSO who, upon checking, found the petitions failed to satisfy the requirements for a petition as outlined in the *Métis Settlements Act*. However, the MSO invited the petitioners to submit individual complaints and those complaints would be reviewed. This resulted in numerous individual complaints; some have been concluded and others are ongoing.

Inappropriate Treatment

A board member of a Settlement-owned company, who was also an employee, complained about the company's election procedure. Thought to be postponed, the Annual General Meeting (AGM) was held without the complainant knowing. Less than half of the board members were present at the AGM. Despite the lack of quorum, a new board was elected and the complainant was not re-elected. The complainant appealed the decisions made at that meeting to Settlement Council. The newly elected Board of Directors banned the complainant from the company. As it took the Council several months to deal with the issue and lift the suspension, the complainant requested a loan to cover debts due to the loss of income.

When the Council was notified of the complaint to the MSO, it requested the MSO *mediate*. The complainant proposed that if the Council forgave the loan, the complaint would be withdrawn. The Council passed a motion forgiving the outstanding debt. As the issue was resolved to the satisfaction of all parties, MSO involvement was concluded.

Housing Delays

A complaint was received about ongoing housing delays. The MSO review found that the Council gives priority to resident members. The complainant was considered a non-resident member, not having lived on the Settlement for 12 consecutive months. The MSO referred the complainant to the Métis Settlements Appeal Tribunal (MSAT) for a ruling on the membership dispute.

The complainant was also dissatisfied with the Council's failure to respond to letters. When the Council responded, the complaint was resolved.

Conflict of Interest -- Insider Information

The MSO found evidence to support a complaint that a Settlement employee was using insider information to enable immediate family members to compete unfairly for contracts on the Settlement. The employee resigned before the review was completed; however, the Council was notified of the finding of conflict of interest. The Administrator took remedial action by circulating a memo to the Council and staff, reminding them of the provisions of the *Métis Settlements Act* related to conflict of interest. The Administrator also quoted Settlement Personnel Policy on conflict of interest. The memo directed all staff and the Council to report anyone contravening these provisions to the Administrator or the Chairman. The memo was also published in the Settlement Newsletter.

Unfair Termination

An employee of a Settlement-owned company complained about being unfairly dismissed. The MSO review found the employer to be very cooperative, admitting there was a lack of proper documentation. After consulting

with Alberta Human Resources and Employment and the Employment Standards Code, it was determined the complainant did not qualify for severance pay in lieu of written termination notice as the complainant had not been employed with the company for a long enough time. The MSO was asked to *mediate*.

The employer offered to pay the complainant a sum of money as severance compensation even though *not legally required to do so.* The complainant accepted the severance and signed a letter acknowledging the dispute was closed. The employer further advised that the company would also be implementing a three-step policy: employees will be issued a verbal caution for the first instance of poor performance (documented), a written warning if there is a second occurrence, and a termination notice upon a third offense. The company's corrective action was satisfactory, and the MSO closed the file.

Unfair Hiring Practices

The complainant applied for a contract position with the Settlement but was not selected. The successful candidate was a member of a different Settlement. The complainant felt the Administrator had influenced the decision. The MSO contacted the Administrator, who said the candidate had since been fired. The complainant was then hired for the position. Later, the Council also terminated the Administrator's services. The complainant agreed the Council's termination of both individuals involved in the complaint eliminated the need to pursue the complaint, and the file was closed.

Administrative Delay

A member complained a Settlement employee failed to respond to an information request in a timely manner. The complainant contacted the MSO after an unsuccessful second request to the Settlement. The complainant indicated the Council had passed a resolution to address the information request, but the information had still not been received. The MSO contacted the Settlement employee and was assured the information would be supplied. Five months had passed since the initial request. The MSO closed the file when the complainant advised the information had finally been received.

Failure to Post Minutes

An MSO review into the complaint revealed that meeting minutes had not been posted properly dating back nine months. The Administrator agreed to place an article in the Settlement Newsletter advising the membership that meeting minutes are available through the Receptionist or the Recording Secretary. The Council was notified of the findings and took corrective action, including amending policy and procedure to prevent future occurrences. This action resulted in the file being closed.

Conflict of Interest – Personal Interests

A review into this complaint revealed a Councillor was in conflict of interest when participating in meetings with a company, which the Settlement did business with, and failing to declare a conflict. The Councillor and the Councillor's family had ongoing business with this company as well. No remedial action has been taken on this matter due to the fact that the Councillor resigned from the Council during the MSO review.

Unfair Termination

A Settlement employee of many years complained of unfair termination. The MSO reviewed Settlement documents noting

instances of poor performance and liability concerns, of which the complainant was aware. As well, Alberta Environment had imposed new regulations – the Settlement was to post a new position requiring a grade 12 high school diploma (the legislation did allow for one year of appropriate experience to be substituted for one year of high school). The complainant was offered the opportunity to apply for the new position based on experience rather than education but *chose not to apply*. The Settlement had complied with their Personnel Policy and with Alberta Employment Standards by giving the complainant the required written notice of termination. Even though the Personnel Policy and Alberta Employment Standards Code were complied with, the Code does allow for an appeal and the complainant was informed of this "Right of Appeal."

Livestock Issues

A complainant alleged the Settlement was rounding up and selling the complainant's livestock. The MSO review found no evidence to support this complaint. The property is almost entirely unfenced and the livestock was unbranded. The *Stray Animals Act* says it is the owner's responsibility to fence property to prevent animals from trespassing on another person's property; landowners can capture, or authorize the Settlement to capture, animals that have wandered onto their property. The complainant was advised of the findings, and the file was closed.

Unfair Rejection of a Petition

Allegedly, a Settlement Administrator unfairly rejected a petition. Members of the Settlement wanted the Council to stop issuing hunting permits to non-Settlement persons. A Settlement Bylaw would be needed to restrict or discontinue the Council's right to issue special hunting and fishing permits to non-members. The MSO review concluded that several sections of the *Métis Settlements Act (MSA)* must be satisfied to petition for a bylaw. If a petition fails to comply with any one of the sections, the Council and/or the Administrator can reject it.

Section 57 of the MSA sets out the rules for petitioning for a bylaw. The number of Settlement members who sign the petition has to equal at least 20% of the Settlement population area. The MSO contacted the Métis Settlements Land Registry to confirm the population number. The Administrator agreed the petition did, in fact, contain 20% of the population.

Section 58 of the MSA describes what content a petition must have. The purpose for the petition was stated on each page, but the Administrator felt the petition statement did not make it clear that the petitioners wanted a *new bylaw*. Some of the witness signatures were not recognized, and the Administrator wanted an affidavit by the witnesses stating that the signatures were indeed from members of the Settlement. Section 58 gives the Administrator the right to require this.

Section 59 of the MSA allows the Administrator to determine the "sufficiency" of a petition. The Administrator identified a number of reasons why the petition was insufficient. The Administrator took this responsibility seriously, obtained a legal opinion before making a decision and provided the complainant with a written decision.

After reviewing the petition and the steps the Administrator took, the MSO determined there was insufficient evidence to support the complaint. The MSO advised the

complainant of the right to petition the Council for a bylaw as set out in *Section 57 of the MSA* and suggested the complainant have someone with legal training assist to make sure any new petitions meet all the "sufficiency" requirements of the *MSA*. The MSO file was closed.

Inadequate Severance Package

A person complained a Settlement severance package was inadequate. The MSO review into this matter found that Settlement Personnel Policy and Alberta Employment Standards legislation are silent about severance packages except as they relate to termination pay in lieu of written notice. Severance packages are at the discretion of the employer. As the issue of severance pay was a non-jurisdictional civil matter between the Settlement and the complainant, MSO involvement was concluded.

Nepotism

A complainant alleged that a Council member's relative was hired for a position. The MSO review found that several individuals applied, and the person hired was the only one who met the specified requirements. There was also no evidence that the Council member was involved in the hiring process. The MSO closed the file.

REQUESTS FOR INFORMATION

Conflict of Interest

An individual had a concern about being on an interview panel when a relative was being interviewed. The individual wanted to know if this was a *conflict of interest* situation.

This request for information is a good example of an increasing level of concern for potential conflict of interest situations and an attempt to resolve issues before they become a complaint. In this case, the MSO advised the individual to inform both the person being interviewed and the others on the interview panel of the circumstances and only to proceed if all parties are comfortable with the situation. The circumstances should also be documented. The best resolution to these potential conflict of interest situations is to remove oneself from being involved. This is not easy given the circumstances of Settlement life, but it is necessary if one wants to avoid others perceiving that a conflict of interest situation has occurred.

A conflict of interest concerns immediate family members (mother, father, sister, brother, son, daughter or spouse) and does not include extended family. The issue of nepotism, however, is of concern. Nepotism can apply to individuals beyond immediate family members.

Improper Dismissal/Loan Repayment

A Settlement employee complained of being improperly suspended from a job because of behavioral issues. After refusing treatment and counseling, the employee was suspended with pay for a period of time. The employee requested, and received, a Settlement loan to set up a work-related program but did not set up the program, using the money personally. As a result, the Settlement took action to recover the loan.

The MSO informed the employee that, because the loan was not used for the intended purpose and was used personally, the money must be returned, with interest (as per the "Theft by Conversion" section of the *Criminal Code of Canada*). The employee understood and will be taking steps to return the money.

Appendix A

Ministerial Order

Excerpt from the Ministerial Order
Legislating the Mandate of the
Office of the Métis Settlements Ombudsman

I, PEARL CALAHASEN, Minister of Aboriginal Affairs and Northern Development, pursuant to section 235 of the *Métis Settlements Act*, authorize Harley Johnson to exercise or perform the powers and duties conferred on me under the following sections of the *Métis Settlements Act*:

Section 171(1)(a),
Section 171(1)(c) except insofar as it applies to the General Council,
Sections 171(3) and (4),
Section 172(1),
Section 174,
Section 175(a), and
Section 175(c) except insofar as it applies to the General Council.

As provided in section 235(1) of the *Métis Settlements Act*, this authorization does not exclude my authority to exercise any power or duty under the above-mentioned sections of the *Métis Settlements Act*.

This Order comes into force April 1, 2003.

Appendix B

Budget Variance Report

Office of the Métis Settlements Ombudsman
as of March 31, 2005

	Budget Allocation	Expenditure	Balance
Staff	$ 277,000.00	$ 296,388.78	$ (19,388.78)
External Contractors	$ 5,000.00	$ 8,736.81	$ (3,736.81)
Special Investigations	$ -	$ 22,174.94	$ (22,174.94)
Legal	$ 40,000.00	$ 21,342.64	$ 18,657.36
Mentoring Program	$ 23,000.00	$ 26,660.10	$ (3,660.10)
Communications	$ 5,000.00	$ 10,189.05	$ (5,189.05)
Material & Supplies	$ 5,000.00	$ 5,149.80	$ (149.80)
Office Furniture	$ -	$ 422.59	$ (422.59)
Rentals	$ 15,000.00	$ 3,116.17	$ 11,883.83
Maintenance/Repairs	$ 15,000.00	$ 1,336.94	$ 13,663.06
Telephones	$ 4,000.00	$ 8,013.59	$ (4,013.59)
IT Support	$ 10,000.00	$ 18,922.01	$ (8,922.01)
Computers	$ -	$ 8,240.97	$ (8,240.97)
Software	$ -	$ 517.20	$ (517.20)
Postage/courier	$ 1,000.00	$ 169.24	$ 830.76
Travel	$ 40,000.00	$ 37,726.58	$ 2,273.42
Training & Development	$ 5,000.00	$ 6,433.38	$ (1,433.38)
Outreach	$ 5,000.00	$ 2,697.04	$ 2,302.96
GST Not Recoverable	$ -	$ 8,361.73	$ (8,361.73)
TOTAL	**$ 450,000.00**	**$ 486,599.56**	**$ (36,599.56)**
		Carry-over 2003	$ 37,987.57
		Adjusting Entries @ Year End	$ 3,910.45
		Miscellaneous Revenue	$ 14,052.00
		GST Refund	$ 13,822.94
		GST Receivable	$ 4,706.59
		Interest Income	$ 54.57
		Human Resources Development Canada Funding	$ 1,549.00
		Balance Forward	**$ 39,483.56**

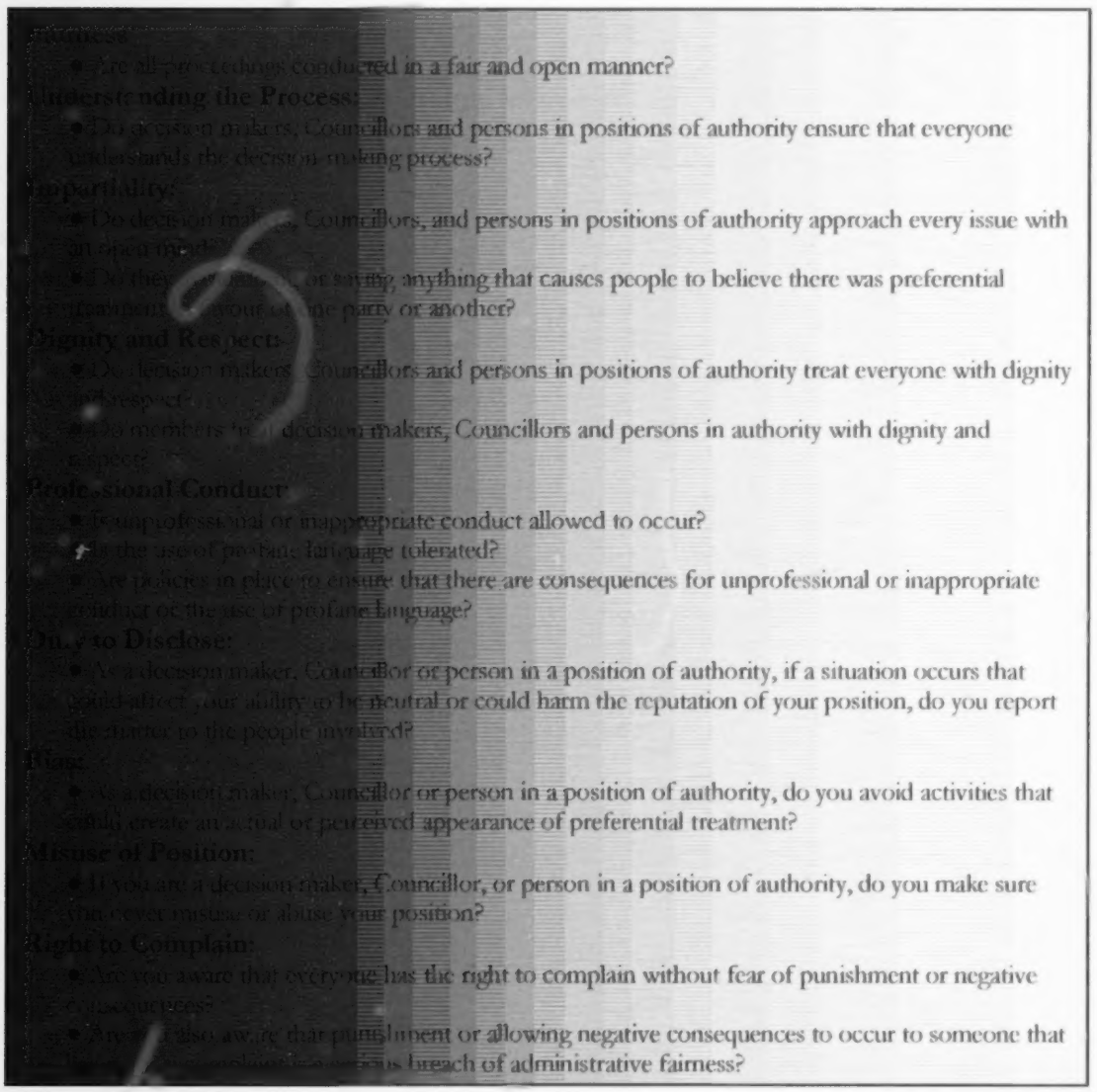
Appendix C

Administrative Fairness Checklist

Introduction

An important step along the road to self governance and self regulation of Alberta's eight Métis Settlements is the confidence that everyone is treated fairly and with respect, especially when dealing with Councillors, decision makers and persons in positions of authority.

This Administrative Fairness Checklist is prepared to guide Council, staff, members and other entities in their daily business dealings with each other. Answering the following questionnaire honestly will help decide whether business on a Settlement is being conducted as fairly as possible.



Fairness:

- Are all proceedings conducted in a fair and open manner?

Understanding the Process:

- Do decision makers, Councillors and persons in positions of authority ensure that everyone understands the decision-making process?

Impartiality:

- Do decision makers, Councillors, and persons in positions of authority approach every issue with an open mind?
- Do they refrain from doing or saying anything that causes people to believe there was preferential treatment in favour of one party or another?

Dignity and Respect:

- Do decision makers, Councillors and persons in positions of authority treat everyone with dignity and respect?
- Do members of decision makers, Councillors and persons in authority with dignity and respect?

Professional Conduct:

- Is unprofessional or inappropriate conduct allowed to occur?
- Is the use of profane language tolerated?
- Are policies in place to ensure that there are consequences for unprofessional or inappropriate conduct or the use of profane language?

Duty to Disclose:

- As a decision maker, Councillor or person in a position of authority, if a situation occurs that could affect your ability to be neutral or could harm the reputation of your position, do you report the matter to the people involved?

Bias:

- As a decision maker, Councillor or person in a position of authority, do you avoid activities that could create an actual or perceived appearance of preferential treatment?

Misuse of Position:

- If you are a decision maker, Councillor, or person in a position of authority, do you make sure that you never misuse or abuse your position?

Right to Complain:

- Are you aware that everyone has the right to complain without fear of punishment or negative consequences?
- Are you also aware that punishment or allowing negative consequences to occur to someone that complains is a serious breach of administrative fairness?

Information and Communication

- Is public information available in a format that is understandable and written in plain language?
- Is public information also available on audiocassette, Braille, Cree or other formats if necessary?

Clarification:

- Are adequate explanations provided for people asking for information about such things as the [illegible] and responsibilities of Council, Council members, staff and workers?
- Are adequate explanations given to people asking for details about activities on the Settlement, [illegible] entitlements, eligibility criteria, other options, etc.?

Forms:

- Are all forms that require completion written in plain, clear language?
- Are all forms that require completion easy-to-read and understand?

Freedom of Information:

- Are individuals promptly provided with forms and statements they have signed?

Letters and Correspondence:

- Are letters and correspondence written in clear plain language and made available in formats [illegible] people who have difficulty reading or who are blind?

Customer Service at Settlement Buildings and Offices

Telephone Access:

- Are telephones answered quickly?
- Do telephones ever go unanswered?
- Are callers able to leave a voice mail message?
- Are telephone messages and faxes replied to in a timely manner?
- Is there a preferred fax number?

Access to Public Buildings:

- Are washroom facilities available for the public?
- Is adequate handicapped parking?
- Is there convenient public access?
- Are Settlement buildings, offices and washrooms wheelchair accessible?
- Are there play areas for children?
- Are Settlement offices and buildings child-friendly?

Facilities:

- Is the workplace on the Settlement safe and healthy for staff?
- Are Settlement buildings and offices designed to respect and protect the privacy of Settlement [illegible]

Decisions and Procedures

Opportunity to be Heard and to Respond:

- Are individuals given adequate opportunity to present information and evidence in support of their position?

Timeliness:

- Are decisions made and actions taken within a reasonable time period?

Reasons for Decisions:

- Are adequate reasons for decisions and actions communicated or provided to the affected parties [illegible]

Appeal Review and Complaint Procedure:

- Are individuals informed about ways to appeal, request a review, or complain about [illegible] made or actions taken?
- Is information provided in a polite, respectful way?
- Is everyone in the community aware of these rights through highly visible posters and brochures?

Complaint Procedures:

- Are complaint procedures well known, clearly defined and understandable?
- Are mechanisms for improving complaint procedures published or made available to [illegible] complainants?
- Are complaints welcome and given careful consideration?

Organizational Issues at Settlement Offices and Work Sites

- Do job descriptions clearly and simply outline the work performed?
- Do they also take accurately describe the work done?

Re-organization:

- Can jobs be combined, refined or the work re-organized to achieve a higher quality or better delivery of service?

Coordination:

- Could service quality and fairness to Settlement members be improved through adjustments in policy and procedures?
- Could relationships with other partners, outside communities and government agencies be made better through adjustments to policy and procedures?
- What procedures are in place to encourage an internal audit or to check that work is being done in the way it was originally planned?
- Is there an attitude in the work place that promotes growth, change and ongoing improvement?

Agency Review and Planning

Consultation with Settlement Members:

- Are affected members invited to take part in the planning of changes to the Settlement?
- Is this consultation done in a meaningful and timely way?
- Do everyone affected know how the final decision will be made at the beginning of his or her involvement?

Evaluation:

- Are systems in place that accurately record and organize statistical information so that changes in programs or policies can be evaluated and adjusted if necessary?

Distribution of Settlement Resources

Land and Housing:

- Is the distribution of settlement land and/or housing fair?
- Do members have equal opportunity to receive Settlement land and/or housing?
- Are the qualification criteria to receive land and/or housing clearly understood and fair?

Jobs:

- Do members have an equal opportunity to compete for jobs?
- Are positions and work distributed fairly amongst Settlement members?

Appendix D

Conflict of Interest Checklist

Background

All members of a Métis Settlement Community are entitled to a governance structure that is conducted with fairness, integrity and impartiality of decision making. Public trust is damaged when the private interests of an elected official or an employee takes, or appears to take, priority over the public interest, thus leading to a conflict of interest or an apparent conflict of interest.

Purpose of the Checklist

This checklist will be used to guide conflict of interest investigations within the Métis Settlements of Alberta. It can inform the person making a complaint and the recipient of a complaint about the criteria to be used in an investigation. It can also serve as a training tool and as information for the Métis community. This checklist is a living document that will change from time to time as the need arises.

Application

This checklist applies to all elected Councillors and employees of Métis Settlement Councils and their entities (businesses owned in whole or in part by the Settlement).

Definitions

"Conflict of Interest"

- arises when a Council member or an employee is involved in a decision or action during the course of his/her public duties, knowing that there is, or may be, an opportunity to further his/her personal or financial interests or those of an immediate family member or close personal friend.

"Apparent Conflict of Interest"

- arises when a reasonable person would think that the individual's judgment is likely to be affected by a private interest.

"Potential Conflict of Interest"

- is something that may develop into an actual conflict of interest.

"Immediate Family"

- means spouse, father, mother, brother, sister and children.

"Individual(s), someone, anyone, and everyone"

- refers to Councillors and employees of Métis Settlement Councils and their entities.

"Private Interest"

- refers to an interest that is unique to the individual as opposed to an interest or matter that applies to all or a large group of members of the community. A private interest benefits the individual, an immediate family member or a close personal friend in a disproportionate or exceptional way. Private interest is not limited to financial matters. It is when private matters interfere with a Councillor's or an employee's public role that they create a conflict of interest or an apparent conflict of interest.

CONFLICT OF INTEREST POLICY:

- Are there Council policies and guidelines regarding conflict of interest and, if so, are they followed?
- Are these policies consistent with the *Métis Settlements Act* and any policies developed through the Métis Settlements Council or General Council?
- Does Council ensure that all managers, employees and business-related entities are made aware of the conflict of interest policy and guidelines?
- What actions are required of public office holders?
  - In all cases, the community member who holds a public office is responsible to take immediate action if he/she suspects that an actual, apparent or potential conflict of interest is possible, whether financial or otherwise.
  - Section 39 of the *Métis Settlements Act* requires a Council member to disclose any real or apparent financial conflict of interest to the Council. If the matter before Council is to be decided by a resolution, the Councillor must withdraw from further discussion, voting or involvement unless it is decided by Council that the conflict of interest is insignificant.
  - A Council employee is required to immediately disclose a possible conflict of interest to his/her supervisor. The employee may be required to withdraw from any further involvement or action on the matter.

Examples of Conflict of Interest

While it is not possible to predict all conflict of interest situations, people can use the following headings and questions to help identify where most conflict of interest situations could occur.

a) Furthering Private Interests

- Does an immediate family member or a close personal friend stand to gain or lose financially from the individual's or the organization's decision or action in a matter?
- Does an immediate family member or a close personal friend stand to gain or lose in some way, other than financially, from the individual's or the organization's decision or action in a matter?
- Is anyone using his/her position to influence a decision, knowing it might benefit an immediate family member or a close personal friend?
- Is anyone using or communicating privileged or confidential information, knowing it might benefit an immediate family member or a close personal friend?
- Is anyone using his/her position to influence a decision or an action, knowing that it may benefit or appear to benefit an immediate family member or a close personal friend?

b) Nepotism

- Is someone in a managerial or regulatory position over an immediate family member or anyone with whom the relationship between them could bring that individual's fairness into question?
- Is anyone involved in interviews or hiring decisions where applicants are, or include, immediate family members or close personal friends?

c) Acceptance of Gifts, Gratuities or Other Benefits

- Is anyone accepting favours, gifts, services or hospitality from those who stand to gain or lose from that individual's or the organization's decision or action?

Note: This does not prevent acceptance of small gifts of little value or of a cultural nature, or from being honoured in a public manner or publicly being recognized for good work.

d) Outside Employment

- Is an immediate family member or a close personal friend gaining or appearing to gain an unfair advantage over other Settlement members in obtaining contracts or other outside employment, due to that individual's public role or access to privileged information?
- Is anyone conducting private business during working hours to the extent that it interferes with his/her public duty?
- Is anyone using public premises, equipment or supplies for private use without appropriate authorization?
- Is anyone using their public role to advance their own private interests in any way?

e) Public Statements

- Does everyone disclose confidential information only to those who are authorized to receive it? (These actions may also be governed by the *Freedom of Information and Protection of Privacy Act.*)
- Does everyone avoid making public remarks that are not positive and supportive of fellow workers, managers and their public role?

f) Business or Financial Interests

- Does everyone disclose to the proper authority any business or financial interests of theirs or an immediate family member that may be affected, or may appear to be affected, by a matter under consideration with which they become involved in the course of their public duties?

g) Volunteer Activities

- Do volunteer activities take up an undue amount of time during working hours?
- Does everyone avoid making any volunteer activities look like official or Council business? Is payment wrongfully accepted for any volunteer activities?

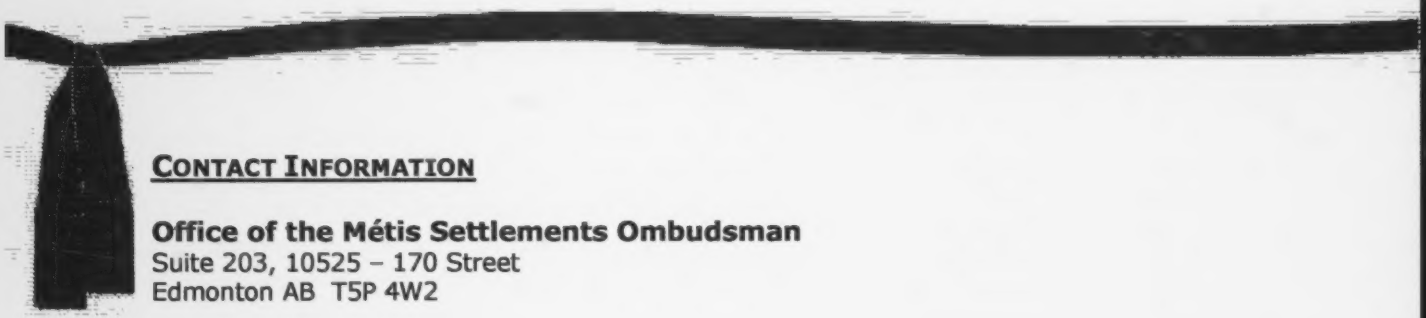
Note: Individuals are encouraged to participate in volunteer activities unless this causes an actual or apparent conflict of interest.

h) Political Activities

- Are individuals prepared to take a leave of absence from their Settlement position if campaigning for a federal or provincial office? If successful, are they prepared to resign from their Settlement position?
- Do individuals observe all conflict of interest guidelines in the course of their political activities?

i) General Questions to Consider

- What if the positions were reversed? What if the decision maker was applying for a job, a promotion or a contract and the applicant was in the position of the decision maker? Would the process seem fair?
- If the individual participates in this decision or action, would he/she be worried if fellow workers and the public became aware of his/her association or connection?
- Is the individual making the decision confident of his/her ability to act fairly and in the public interest?



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